IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WEB TELEPHONY, LLC, Plaintiff, v. VERIZON COMMUNICATIONS, INC., AT&T CORP., AT&T INC., EARTHLINK, INC., SUNROCKET CORP., VONAGE HOLDINGS, CORP, AND VONAGE AMERICA, INC., Defendants.	)	Civil Action No. 2:07-CV-085(DF) Jury Trial Demanded

DEFENDANT EARTHLINK, INC.'S ANSWER AND COUNTERCLAIMS

Defendant EARTHLINK, INC. ("EarthLink"), through its undersigned counsel, for its Answer to the Complaint of Plaintiff WEB TELEPHONY, LLC ("Web Telephony"), responds as follows.

ANSWER

1. EarthLink admits that U.S. Patent No. 6,445,694 (the "'694 Patent") is entitled "Internet Controlled Telephone System" and that U.S. Patent No. 6,785,266 (the "'266 Patent") is entitled "Internet Controlled Telephone System." EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Complaint that are directed to the other named defendants to this action and the allegations that Web Telephony owns the '694 Patent and the '266 Patent and, therefore, denies the same. EarthLink denies the remainder of the allegations of paragraph 1 of the Complaint and specifically denies that it has in any way infringed any of the claims of the '694 Patent or the '266 Patent.

Dockets.Justia.com

2. EarthLink admits that the Complaint purports to state an action arising under Title 35 of the United States Code and does not contest that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a), but denies it has committed any act of infringement of any of the claims of the '694 Patent or the '266 Patent.

3. EarthLink does not contest that venue is proper in this Judicial District. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 of the Complaint that are directed to the other named defendants to this action and, therefore, denies the same. EarthLink denies the remainder of the allegations of paragraph 3 of the Complaint and specifically denies that it has in any way infringed any of the claims of the '694 Patent or the '266 Patent.

4. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint and, therefore, denies the same.

5. EarthLink admits that a copy of the '694 Patent is attached as Exhibit A to the Complaint and reflects an issue date of September 3, 2002. EarthLink admits that a copy of the '266 Patent is attached as Exhibit B to the Complaint and reflects an issue date of August 31, 2004. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 5 of the Complaint and, therefore, denies the same.

6. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the Complaint and, therefore, denies the same.

7. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Complaint and, therefore, denies the same.

8. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint and, therefore, denies the same.

9. EarthLink admits the allegations of paragraph 9 of the Complaint.

10. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10 of the Complaint and, therefore, denies the same.

11. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint and, therefore, denies the same.

12. EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12 of the Complaint and, therefore, denies the same.

13. EarthLink incorporates by reference each of its responses to paragraphs 1 through 12 of the Complaint as if fully set forth herein.

14. EarthLink admits that the copy of the '694 Patent attached to the Complaint reflects an issue date of September 3, 2002 and that the patent is entitled "Internet Controlled Telephone System." EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 14 of the Complaint and, therefore, denies the same.

15. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint and, therefore, denies the same.

16. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint that are directed toward the other named defendants and, therefore, denies the same. EarthLink denies the remainder of the allegations of Paragraph 16 of the Complaint and specifically denies that it has infringed, contributed to the infringement, or induced others to infringe the '694 Patent.

17. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint that are directed toward the other

named defendants and, therefore, denies the same. EarthLink denies the remainder of the allegations of Paragraph 17 of the Complaint and specifically denies that it has infringed, contributed to the infringement, or induced others to infringe the '694 Patent.

18. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint that are directed toward the other named defendants and, therefore, denies the same. EarthLink denies the remainder of the allegations of Paragraph 18 of the Complaint and specifically denies that it has infringed, contributed to the infringement, or induced others to infringe the '694 Patent.

19. EarthLink incorporates by reference each of its responses to paragraphs 1 through 18 of the Complaint as if fully set forth herein.

20. EarthLink admits that the copy of the '266 Patent attached to the Complaint reflects an issue date of August 31, 2004 and that the patent is entitled "Internet Controlled Telephone System." EarthLink lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 20 of the Complaint and, therefore, denies the same.

21. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint and, therefore, denies the same.

22. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint that are directed toward the other named defendants and, therefore, denies the same. EarthLink denies the remainder of the allegations of Paragraph 22 of the Complaint and specifically denies that it has infringed, contributed to the infringement, or induced others to infringe the '266 Patent.

23. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint that are directed toward the other named defendants and, therefore, denies the same. EarthLink denies the remainder of the allegations of Paragraph 23 of the Complaint and specifically denies that it has infringed, contributed to the infringement, or induced others to infringe the '266 Patent.

24. EarthLink is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Complaint that are directed toward the other named defendants and, therefore, denies the same. EarthLink denies the remainder of the allegations of Paragraph 24 of the Complaint and specifically denies that it has infringed, contributed to the infringement, or induced others to infringe the '266 Patent.

25. EarthLink acknowledges that the Complaint sets forth a demand for trial by jury on all issues.

26. EarthLink denies the allegations contained in the Prayer for Relief of the Complaint and further denies that Web Telephony is entitled to any relief whatsoever against EarthLink.

27. Unless specifically admitted above, each and every allegation contained in the Complaint is denied.

AFFIRMATIVE DEFENSES

For its affirmative defenses to the Complaint, EarthLink alleges as follows:

First Affirmative Defense

Web Telephony's claims are barred because EarthLink does not infringe, either literally or under the Doctrine of Equivalents, nor has it induced or contributed to the infringement of, any of the claims of the '694 Patent or the '266 Patent.

Second Affirmative Defense

Web Telephony's claims are barred because the claims of the '694 Patent and the '266 Patent are invalid, void, or unenforceable for failure to comply with one or more provisions of Title 35 of the United States Code and/or Title 37, C.F.R.

Third Affirmative Defense

Web Telephony's claims are barred and/or limited by prosecution history estoppel.

Fourth Affirmative Defense

Web Telephony's claims are barred to the extent Web Telephony has dedicated to the public methods, systems and products disclosed in the '694 Patent or the '266 Patent but not literally claimed therein.

Fifth Affirmative Defense

Web Telephony is not entitled to injunctive relief because there is no threat of immediate or irreparable harm, and an adequate remedy at law exists in the event Web Telephony is entitled to some form of relief.

Sixth Affirmative Defense

EarthLink is presently investigating the facts relating to the procurement of the '694 Patent and the '266 Patent and the assertion of infringement against EarthLink. To the extent this investigation reveals any facts relevant to the claims of infringement, the invalidity, or unenforceability of the '694 Patent and the '266 Patent, EarthLink reserves the right to amend to assert such allegations and/or defenses based thereon as may be appropriate.

COUNTERCLAIMS

For its Counterclaims against Counterclaim-Defendant WEB TELEPHONY, LLC ("Web Telephony"), Counterclaim-Plaintiff EARTHLINK, INC. ("EarthLink") alleges as follows:

I. Nature of the Action

1. EarthLink seeks a declaratory judgment that the claims of the '694 Patent and the '266 Patent are not and have not been infringed by EarthLink and that the claims of the '694 Patent and the '266 Patent are invalid, void, or unenforceable.

II. Jurisdiction and Venue

2. This is an action for Declaratory Relief for which this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, 1367(a), 2201, and 2202.

3. Personal jurisdiction and venue are proper in this judicial district by virtue of Web Telephony having filed its Complaint herein.

III. Parties

4. EarthLink is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1375 Peachtree Street, Atlanta, Georgia 30309.

5. Upon information and belief, Web Telephony is a corporation organized and existing under the laws of the State of Illinois.

6. By its Complaint, Web Telephony purports to be the owner of the '694 Patent and the '266 Patent and to assert claims against EarthLink for infringement of the claims of the '694 Patent and the '266 Patent.

IV. Background

7. Web Telephony claims to be the owner by assignment of all legal rights, title and interests in the '694 Patent and the '266 Patent, including the right to enforce the '694 Patent and the '266 Patent.

8. Web Telephony sued EarthLink for infringement of the claims of the '694 Patent and the '266 Patent in this Court on March 14, 2007.

9. EarthLink has denied Web Telephony's claims of infringement of the claims of the '694 Patent and the '266 Patent and contends that the claims of the '694 Patent and the '266 Patent are invalid, void, and/or unenforceable under Title 35 of the United States Code or the provisions of Title 37, C.F.R.

10. EarthLink has a reasonable apprehension that Web Telephony will continue to assert that EarthLink infringes the claims of the '694 Patent and the '266 Patent.

11. Web Telephony's assertions that EarthLink infringes the claims of the '694 Patent and the '266 Patent have caused an actual and justiciable case or controversy within the jurisdiction of this Court pursuant to 28 U.S.C. §§ 2201 and 2202.

V. Count I

12. EarthLink restates and incorporates by reference each of the allegations of Counterclaim paragraphs 1-11.

13. Web Telephony has alleged and claimed that EarthLink infringes the claims of the '694 Patent and the '266 Patent.

14. EarthLink does not infringe any valid claims of the '694 Patent or the '266 Patent and has not induced or contributed to the infringement of any valid claims of the '694 Patent or the '266 Patent.

15. As a result, EarthLink seeks a declaration that it does not directly infringe, has not induced the infringement of, and has not contributed to the infringement of any valid claims of the ’694 Patent and the ’266 Patent, either literally or under the doctrine of equivalents.

VI. Count II

16. EarthLink restates and incorporates by reference each of the allegations of Counterclaim paragraphs 1-15.

17. The claims of the ’694 Patent and the ’266 Patent fail to meet the requirements set forth in Title 35 of the United States Code or Title 37, C.F.R., and are, therefore, invalid, void, and/or unenforceable.

18. As a result, EarthLink seeks a declaration that the claims of the ’694 Patent and the ’266 Patent are invalid, void, and/or unenforceable.

JURY DEMAND

In accordance with Fed. R. Civ. P. 38(b), EarthLink hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, having fully answered and counterclaimed, EarthLink prays for judgment as follows:

A. That this Court fully and finally dismiss with prejudice Web Telephony’s claims against EarthLink and order that Web Telephony take nothing from EarthLink;

B. That this Court find and declare that EarthLink has not infringed, in any manner, any claim of the ’694 Patent or the ’266 Patent;

C. That this Court find and declare that the claims of the '694 Patent and the '266 Patent are invalid, void, and/or unenforceable;

D. That this Court award EarthLink all of its costs of this action;

E. That this Court find that this is an exceptional case and award EarthLink its costs and expenses including attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise; and

F. That this Court grant EarthLink such other and further relief as the Court shall deem just and proper.

DATED: May 9, 2007

Respectfully submitted,

RAMEY & FLOCK, P.C.

/s/ Deron R. Dacus
Deron R. Dacus
Texas State Bar No. 00790553
100 East Ferguson, Suite 500
Tyler, Texas 75702
Tel: 903.597.3301
Fax: 903.597.2413

DUANE MORRIS LLP
L. Norwood Jameson
Georgia State Bar No. 003970
Matthew C. Gaudet
Georgia State Bar No. 287789
Claus D. Melarti
Georgia State Bar No. 501181
Leah J. Poynter
Georgia State Bar No. 586605
1180 West Peachtree Street NW, Suite 700
Atlanta, GA 30309-3448
Tel: 404.253.6900
Fax: 404.253.6901

ATTORNEYS FOR DEFENDANT
EARTHLINK, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on May 9, 2007. Any other counsel of record will be served by First Class mail on this same date.

/s/ Deron R. Dacus
Deron R. Dacus